

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ASHLEY MAHER,

Plaintiff,

-against-

CITY OF NEW YORK; DETECTIVE JASON
GREENBERG; AND POLICE OFFICER JOHN DOE 1,

Defendants.

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**ANSWER TO PLAINTIFF'S
FIRST AMENDED
COMPLAINT ON BEHALF
OF DEFENDANT JASON
GREENBERG**

19-CV-6454 (BMC)

JURY TRIAL DEMAND

Defendant Jason Greenberg by his attorney, James E. Johnson, Corporation Counsel of the City of New York, for his answer to the plaintiff's First Amended Complaint ("FAC"), respectfully alleges, upon information and belief, as follows:

1. Denies the allegations in paragraph "1" of the FAC, except admits that plaintiff purports to proceed as stated therein.
2. Denies the allegations in paragraph "2" of the FAC, except admits that plaintiff purports to proceed as stated therein.
3. Denies the allegations in paragraph "3" of the FAC, except admits that plaintiff purports to invoke the jurisdiction of the Court as set forth therein.
4. Denies the allegations in paragraph "4" of the FAC, except admits that plaintiff purports to base venue as stated therein.
5. Denies the allegations in paragraph "5" of the FAC, except admits that plaintiff purports to invoke the Court's supplemental jurisdiction as stated therein.

6. Paragraph “6” of the FAC is a demand for jury trial to which no response is required.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “7” of the FAC.

8. Denies the allegations in paragraph “8” of the FAC, except admits that the City of New York is a municipal corporation organized under the laws of the State of New York and City of New York and maintains its police department consistent with all applicable laws and rules, and respectfully refers the Court to the New York City Charter and Administrative Code for a recitation of the relationship between the City and the New York City Police Department.

9. Denies the allegations in paragraph “9” of the FAC, except admits that Jason Greenberg was employed as a detective in the New York City Police Department on August 22, 2018.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “10” of the FAC as they pertain to an unidentified John Doe defendant.

11. Paragraph “11” of the FAC contains conclusions of law to which no response is required.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “12” of the FAC.

13. Denies knowledge or information sufficient to form a belief as to the truth the allegations in paragraph “13” of the FAC.

14. Denies the allegations in paragraph “14” of the FAC.

15. Denies the allegations in paragraph “15” of the FAC.

16. Denies the allegations in paragraph “16” of the FAC.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “17” of the FAC.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “18” of the FAC, except admits that plaintiff was taken to the 120th Precinct following her arrest.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “19” of the FAC, except admits only that plaintiff was lawfully arrested and processed on August 22, 2018.

20. Denies knowledge or information sufficient to form a belief as to the allegations in paragraph “20” of the FAC.

21. Denies knowledge or information sufficient to form a belief as to the allegations in paragraph “21” of the FAC.

22. Denies the allegations in paragraph “22” of the FAC.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “23” of the FAC.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph “24” of the FAC.

25. Denies the allegations in paragraph “25” of the FAC, except admits that plaintiff’s Complaint was filed on November 15, 2019.

26. Denies the allegations in paragraph “26” of the FAC.

27. In response to the allegations in paragraph “27” of the FAC, defendant Greenberg repeats and re-alleges the responses set forth in the preceding paragraphs of the answer to the FAC, as if fully set forth herein.

28. Denies the allegations in paragraph “28” of the FAC.

29. Denies the allegations in paragraph “29” of the FAC.

30. In response to the allegations in paragraph “30” of the FAC, defendant Greenberg repeats and re-alleges the responses set forth in the preceding paragraphs of the answer to the FAC, as if fully set forth herein.

31. Denies the allegations in paragraph “31” of the FAC.

32. Denies the allegations in paragraph “32” of the FAC.

33. Denies the allegations in paragraph “33” of the FAC.

34. Denies the allegations in paragraph “34” of the FAC.

35. Denies the allegations in paragraph “35” of the FAC.

36. In response to the allegations in paragraph “36” of the FAC, defendant Greenberg repeats and re-alleges the responses set forth in the preceding paragraphs of the answer to the FAC, as if fully set forth herein.

37. Denies the allegations in paragraph “37” of the FAC.

38. Denies the allegations in paragraph “38” of the FAC.

39. Denies the allegations in paragraph “39” of the FAC.

40. In response to the allegations in paragraph “40” of the FAC, defendant Greenberg repeats and re-alleges the responses set forth in the preceding paragraphs of the answer to the FAC, as if fully set forth herein.

41. Denies the allegations in paragraph “41” of the FAC.

42. Denies the allegations in paragraph “42” of the FAC.

43. Denies the allegations in paragraph “43” of the FAC.

44. Denies the allegations in paragraph “44” of the FAC.

45. Denies the allegations in paragraph “45” of the FAC.

FIRST AFFIRMATIVE DEFENSE:

46. The FAC fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE:

47. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of defendants Jason Greenberg or City of New York.

THIRD AFFIRMATIVE DEFENSE:

48. Defendants Jason Greenberg and City of New York have not violated any rights, privileges, or immunities under the Constitution of laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any acts of Congress providing for the protection of civil rights.

FOURTH AFFIRMATIVE DEFENSE:

49. To the extent that the FAC alleges any claims arising under New York State law, such claims may be barred, in whole or in part, for failure to comply with New York General Municipal Law §§ 50-(e), *et seq.*

FIFTH AFFIRMATIVE DEFENSE:

50. At all times relevant to the acts alleged in the FAC, the duties and functions of the municipal defendant’s officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City is entitled to governmental immunity from liability.

SIXTH AFFIRMATIVE DEFENSE:

51. Punitive damages cannot be assessed against defendant City of New York.

SEVENTH AFFIRMATIVE DEFENSE:

52. Plaintiff provoked any incident.

EIGHTH AFFIRMATIVE DEFENSE:

53. Plaintiff may have failed to mitigate her alleged damages.

NINTH AFFIRMATIVE DEFENSE:

54. Defendant Jason Greenberg has not violated any clearly established constitutional or statutory right of which a reasonable person would have known, and therefore is protected by qualified immunity.

TENTH AFFIRMATIVE DEFENSE:

55. At all times relevant to the acts alleged in the FAC, defendant Greenberg acted reasonably in the proper and lawful exercise of his discretion.

ELEVENTH AFFIRMATIVE DEFENSE:

56. Defendant Jason Greenberg had no personal involvement in the excessive force, assault and battery alleged in plaintiff's FAC.

WHEREFORE, defendant Jason Greenberg requests judgment dismissing the FAC in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 8, 2020

JAMES E. JOHNSON
Corporation Counsel of the City of New York
*Attorney for Defendants City of New York &
Jason Greenberg*
100 Church Street
New York, New York 10007
Tel: (212) 356-2334

By: Kiran H. Rosenkilde /s/
Kiran Rosenkilde
Senior Counsel

cc: All counsel (by ECF)